IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.9125 OF 2004

Yeshwant Sadashiv Sansare
and another .... Petitioners
Vs.
New Shrikrishna Boarding
Housing Private Limited and
another .... Respondents

Shri D.B. Sawant for the Petitioners.

Shri A.A. Joshi i/b M/s. Divekar & Co.,
for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 22, 2004

P.C:

1. Heard. The lower Appellate Court while setting aside the order of dismissal of the suit has clearly held that the respondent (No.1) has clearly established that the petitioners, inspite of being allowed to occupy as lodgers for residence, the premises are being used for commercial activities without the consent of the respondent and, therefore, has allowed the appeal in relation to the direction for refund of the amount of Rs.67,200/- and therefore has set aside the order of the lower Court directing refund of the amount of Rs.67,200/-. It has been clearly observed in para 34 of the impugned order that:-

> "There is also no prayer in the application for refund of excess amount. There is also no evidence led by the applicant before the Controller of Hotels and Lodging Houses regarding the excess payment when a case of the applicant that he is a daily lodger, the Controller of Hotels and Lodging Houses of his own calculated the amount of excess payment treating the applicant as a monthly lodger, directing the appellants to refund the amount of Rs.2,52,000/- which I hold that it is without jurisdiction of the Controller of Hotels and Lodging Houses."

Apart from the fact that there is no case for interference on merits of the matter, once the lower Court has arrived at the conclusion about the absence of evidence regarding the excess payment, as well as absence of even the prayer in that regard in the application, the lower Appellate Court was clearly justified in setting aside the order passed by the Controller of Hotels and Lodging Houses directing refund of the alleged excess amount.

2. As regards the order of eviction, the lower

Appellate Court has arrived at the clear finding about the change of user of the premises from residence to commercial activities and in that regard a clear finding is arrived at by the lower Appellate Court in para 26 of the impugned order wherein it has been observed that:-

> "In order to decide this point no.1 on merits at the first place it is an admitted fact that the appellants herein in a private limited company running a lodging house in the name of New Shrikrishna Lodging & Boarding at Gokul Niwas, Ranade Road, Dadar, Bombay-28. There is also no dispute that the respondent no.1 and 2 are in possession of respective rooms as lodger. There is also no dispute that these lodgers are carrying on business activities in the room in their possession for last so many years."

It has also been observed that it was nowhere the case of the petitioners that they are monthly lodgers, as sought to be held by the Controller. On the contrary, the receipts disclose daily payment of the lodging charges. Once the lower Appellate Court, on detail analysis of the evidence, have arrived at the finding

that the petitioners were daily lodgers, no fault can be found with the impugned order setting aside the order of the lower Authority. The said finding is a finding of fact, based on detail analysis of the evidence on record and, therefore, does not warrant interference in writ jurisdiction in exercise of powers under Article 227 of the Constitution. Hence the petition fails and is rejected.

3. At this stage, the learned Advocate for the petitioners prays for time to vacate the premises. Once the authorities have found that the petitioners are daily lodgers, the question of giving further time to vacate the premises does not arise. The request for time to vacate the premises is rejected.